

Overview

The Federal Energy Management Program

The Federal Energy Management Program (FEMP) is pleased to offer you this selection of applicable legislative, executive, legal, and agency documents as a valuable resource designed to assist you in making informed decisions concerning financing for energy projects within the Federal government. Legislation from Congress and orders from the President, such as the Energy Policy Act of 1992 (EPACT) and Executive Order 13123 (EO 13123), both require and enable Federal agencies to implement significant energy efficiency, water conservation, and renewable energy projects.

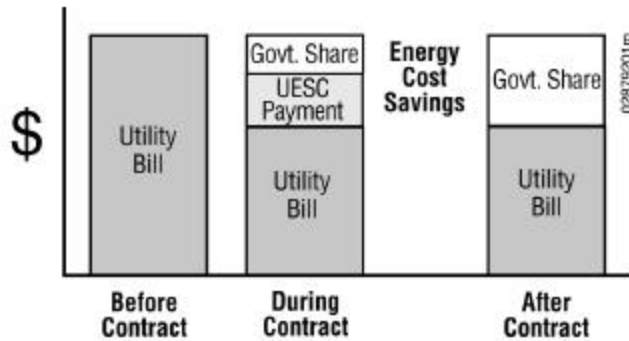
Utility Energy Services Contracts

Federal agencies are eligible to use utility incentive programs to procure financing for energy-savings projects in order to meet EPACT goals. These programs range from simple rebate programs to full, turnkey project implementation programs that include financing, project management, and operations and maintenance. A Utility Energy Services Contract (UESC) is one vehicle that a Federal agency and its utility can use to implement energy efficiency, water conservation, and renewable energy projects.

In a UESC, a utility company agrees to provide Federal agencies with services or products (or both) that are designed to make Federal facilities more energy efficient. Federal facilities can also obtain project financing from a utility company through a UESC. During the contract period, the facility pays a lower utility bill as well as a payment to the utility for the UESC. The total of these two payments may be less than or equal to an average amount of utility bills before the UESC. Although projects are not required to reduce the government's costs during the contract period, they often do. After the project is complete, the utility bill will be reduced as a result of increased energy and water efficiency.

Utility Energy Services Contracts Reallocate the Government's Utility Bill

- Pay a lower utility bill
- Pay for equipment
- Achieve cost savings for the government



UESCs offer many benefits to a Federal agency, including:

- Streamlined procurement process
- Flexible contracts
- Relationship with a long-standing entity
- Payment through the utility bill
- Flexibility in measurement and verification
- One-stop-shopping for a turnkey project
- Water savings can be included in projects

Agencies can capitalize on the many advantages of a UESC. One of the primary benefits is the ability to implement energy efficiency projects without using direct appropriations (however, UESCs can be used in conjunction with appropriations). Vehicles such as areawide contracts, basic ordering agreements, and other agreements used in UESCs save time in implementing site-specific projects. This type of contracting allows agencies great flexibility in developing energy conservation, water conservation, and renewable energy projects, thereby assisting agencies in meeting the goals of EPACT and EO 13123.

Legislation and Executive Actions

These documents outline the legislative and executive authorities that support contracting for utility services, along with regulations associated with procuring these services. The procurement of both utility commodities (electric, gas, and water) and utility services, which include installation of energy efficiency, water conservation, and renewable energy measures, has a significant history of legislative backing.

The Energy Policy Act of 1992 (EPACT), Public Law 102-486

EPACT contains provisions regarding energy-management requirements, budget treatment for energy conservation measures, incentives for Federal agencies, reporting

requirements, new technology demonstrations, and agency surveys of energy-saving potential.

Prior to amendments enacted as part of EPACT, the National Energy Conservation Policy Act (NECPA) was the primary legislative authority directing Federal agencies to improve energy management in their facilities and operations. NECPA was passed in 1978 in response to the energy crises of the 1970s. In 1992, EPACT amended NECPA, requiring that each Federal agency achieve targeted reductions in energy consumption within a specific time period. Measured on a British Thermal Unit per gross-square-foot (Btu/GSF) basis and compared to a fiscal year (FY) 1985 baseline, Federal buildings were required to achieve a 10% reduction in energy consumption by FY 1995. In addition, EPACT amended Section 543 of NECPA to require a 20% reduction in Btu/GSF energy consumption by FY 2000, measured against the FY 1985 baseline.

EPACT also amended NECPA to include an additional energy-management requirement for Federal agencies. Section 543(b) of NECPA, as amended by EPACT, requires that "not later than January 1, 2005, each agency shall, to the maximum extent practicable, install in Federal buildings owned by the United States, energy and water conservation measures with payback periods of less than 10 years," as determined by using Federal life-cycle costing methods and procedures. However, this does not preclude the implementation of projects with payback periods of greater than 10 years.

EPACT Section 152 Subtitle F - Federal Agency Energy Management, amends Sections 542 to 550, Part 3, of the NECPA. These sections have been codified as *42 USC 8256*. Section 546, part (c), provides specific information as it relates to utility incentive programs. The five key elements of this section are highlighted below.

1. Agencies are authorized and encouraged to participate in programs to increase energy efficiency and water conservation or manage electricity demand conducted by gas, water, or electric utilities and generally available to customers of such utilities.
2. Each agency may accept any financial incentive, goods, or services generally available from any such utility, to increase energy efficiency or to conserve water or manage electricity demand.
3. Each agency is encouraged to enter into negotiations with electric, water, and gas utilities to design cost-effective demand management and conservation incentive programs to address the unique needs of facilities utilized by such agency.
4. If an agency satisfies the criteria that generally apply to other customers of a utility incentive program, such agency may not be denied collection of rebates or other incentives.
5. Agencies (except the Department of Defense) shall retain 50% of energy and water cost savings from appropriated funds for additional energy projects, including employee incentive programs.

Section 546, parts (a)–(d) are included on this FEMP Web page. The full text of EPACT (Public Law 102-486) may be found on the Library of Congress *THOMAS* Web site, <http://thomas.loc.gov/>.

Energy Savings and Water Conservation at Military Installations

The legislation codified as *10 USC Sections 2865* and *2866* is part of a larger military construction and military family-housing bill. It applies to Department of Defense (DOD) facilities and is concerned with energy-saving and water conservation goals and plans at military facilities. The code stipulates that DOD facilities:

1. May enter into sole source procurement from gas or electric utilities to design and implement cost-effective demand management and conservation services.
2. May implement projects with a positive net-present-value with a payback of 10 years or less.
3. Shall retain two-thirds of energy and water cost savings from appropriated energy projects and projects as determined by the commanding officer at the site.

Federal Acquisition Regulation, Part 41

Section 201 of the Federal Property and Administrative Services Act of 1949 (*40 USC Section 481*) provides the statutory authority for the General Services Administration (GSA) to acquire utility services. This act has been codified in the Code of Federal Regulations, Title 48, Part 41 of the Federal Acquisition Regulations (FAR Part 41). GSA has delegated to both DOD and the Department of Energy (DOE) the authority to acquire utility services.

FAR Part 41 covers the use of areawide contracts (AWCs) for the purchase of all types of utility services. An AWC is between GSA and a utility-service supplier to cover utility-service needs of Federal agencies within the franchised territory of the supplier. The basic scope of utility services includes electricity, natural or manufactured gas, water, sewerage, thermal energy, chilled water, steam, hot water, and high-temperature hot water.

Several key provisions in FAR Part 41 related to AWCs should be noted:

1. AWCs generally provide for ordering utility service at rates approved of and established by a regulatory body and published in a tariff or rate schedule. However, agencies are permitted to negotiate other rates and terms and conditions of service, but these may require the approval of the regulatory body.
2. Acquired services are for facilities located in a utility's franchised territory or service area.

3. Specific services at specific facilities are requested and executed through delivery orders.

The Public Utilities Organization within GSA has responsibility for maintaining and negotiating new or modified AWCs. For a current listing on the Internet, go to <http://www.gsa.gov/pbs/xu/contracts1.htm>.

Specific questions regarding AWCs should be directed to either

Virgil Ostrander
(202) 501-3994
virgil.ostrander@gsa.gov

or

Linda L. Collins
(202) 501-4267
lindal.collins@gsa.gov

The Energy Center of Expertise within GSA has issued the *Utility Areawide User's Manual* and the *Procuring Energy Management Services with the Utility Areawide Contract* to assist agencies using AWCs to procure utility services. These guides may be viewed and downloaded from the Internet at <http://www.gsa.gov/pbs/centers/energy>.

Executive Order 13123, Greening the Government through Efficient Energy Management

On June 3, 1999, President Clinton signed EO 13123 promoting Government-wide energy efficiency and renewable energy, thereby revoking EO 12902. The new Executive Order strengthens the government's efforts to pursue energy and cost savings, and raises the energy-savings goal to a 35% reduction in energy consumption per square foot in nonexempt Federal buildings by the year 2010 compared to a 1985 baseline. Certain facilities may be considered exempt from this goal, if an agency uses DOE-established criteria to determine that compliance with EO 13123 or EPACT is not practical.

Legal Opinions

The legislation and executive actions that enable agencies to enter into UESCs can be interpreted in many ways. As a result, legal opinions from varying Federal agencies have been issued on this subject. Several legal opinions considered most pertinent to UESCs are available on the FEMP Enabling Documents Web page.

Agency Guidance

As a result of the vast array of legislation and associated regulations regarding UESCs, barriers have developed regarding interpretation of the intent of the legislation and the implementation of various regulations. Therefore, agencies have provided guidance such

as the *Defense Energy Program Policy Memorandum* and the *Alternative Financing Guidance Memoranda*.

Defense Energy Program Policy Memorandum (DEPPM)

The DOD, through the Office of the Under Secretary of Defense, has issued a series of DEPPMs that apply to its energy-management activities. *DEPPM 94-1, Participation in Public Utility Sponsored Energy Conservation and Demand Side Management (EC/DSM) Programs*, establishes a coordinated and integrated strategy for DOD participation in commercial utility companies' EC/DSM programs. As stated in this DEPPM, the objective is to maximize energy and dollar savings.

Alternative Financing Guidance Memoranda (AFGM)

The Interagency Energy Management Task Force publishes AFGM. Through FEMP, DOE develops AFGM, which are then submitted to the task force for review and revision by a subcommittee. Final approval comes from the task force before the AFGM are made available for use by all agencies. These memoranda are patterned after DEPPMs and focus on issues related to alternative financing. One aspect of developing these memoranda is to include, by reference, any legal opinions that might exist regarding the individual memorandum topic. Included on the FEMP Enabling Documents Web page are:

- AFGM #001, providing guidance on the issue of sole source,
- AFGM #002, providing guidance on the issue of congressional notification for utility projects,
- AFGM #003, providing guidance on the relationship of the anti-deficiency act to multi-year contracts, and
- AFGM #004, providing guidance on Federal fund sources for multi-year contracts.

Additional memoranda that impact energy efficiency projects will continue to be developed.

Reference Guide

The legislation, executive actions, legal opinions, and agency guidance provided on the FEMP Enabling Documents Web page contain information about the authorities that enable agencies to enter into UESCs, therefore empowering you to reduce the use and cost of energy in the Federal sector. The *Reference Guide* contains contacts, links to more information, sample model agreements, and utility-related groups within FEMP. This information will assist you in initiating an energy and water efficiency project at your facility.